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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/601,246

06/20/2003

Thomas L. Grey

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EXAMINER

SHAFFER, RICHARD R

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/601,246	<b>Applicant(s)</b> GREY ET AL.	
	<b>Examiner</b> Richard Shaffer	<b>Art Unit</b> 3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 January 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-20 is/are pending in the application.
- 4a) Of the above claim(s) 12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

Applicant's remarks detailing the previously corrected species election as described in the Office Action mailed on May 11th, 2006 are persuasive to the previous objection to the claims. The claims as presented are directed to elected species.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7, 8, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Mencacci (US Patent 3,396,721).

Mencacci discloses a device (**Figures 1 and 2**) comprising: a housing having an aperture; the aperture having a nodule (**2**) disposed within it; a strap (**9**) for attaching the housing to a body; the nodule is sized such that it can apply pressure to an acupuncture point on the wrist while still avoiding adjacent areas of the wrist; a solenoid (**4**) is disposed within the housing and connected to a lever (**3**) for transmitting force to the nodule; a flexible and disposable sheet (**10, 11**) covers the aperture; and all solenoids are inherently capable of having their force controlled. In regard to claim 10, the solenoid is inherently capable of operating within the range of 1/3 Hz to 1/5 Hz.

Claims 7, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Simon (US Patent 5,245,989).

Simon discloses a device (**Figures 1-10c**) comprising: a housing (**104**) having an aperture (**123**); the aperture (**123**) having a nodule (**114**) disposed within it; a strap (**103**) for attaching the housing (**104**) to a body; the nodule is sized such that it can apply pressure to an acupuncture point on the wrist while still avoiding adjacent areas of the wrist (the eye is smaller than the wrist); a solenoid (**Column 3, Lines 30-37**) can be disposed within the housing and connected to a lever (**121a**) for transmitting force to the nodule; and all solenoids are inherently capable of having their force controlled. In regard to claim 10, the solenoid is inherently capable of operating within the range of 1/3 Hz to 1/5 Hz.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon.

Simon discloses all of the claimed limitations except for a flexible sheet coving the aperture along with both a power supply and controller disposed within the housing. It is well known that aesthetic purposes as well as hygienic ones, that covers are used to keep working parts clean and out of sight. It would have been obvious to one having ordinary skill in the art to provide a flexible liner to the device of Simon in order to allow for ease of cleaning as well as hiding what is commonly considered unsightly

machinery. It is also well known in the art that wireless connections allow more freedom in where a computer is located and where the usable tool is. In the case of Simon, one would prefer to allow a subject freedom to move about instead of being seated adjacent a computer to receive wired commands in terms of frequency and strength. It would have further been obvious to provide for a wireless connection in which the helmet of Simon had its own power supply and receiving controller in order to allow a patient mobility from a computer.

### ***Response to Arguments***

Applicant's arguments filed on January 25th, 2008 have been fully considered but they are not persuasive. With regard to applicant's arguments related to the interpretation of "lever" in the claims, there is no requirement for there to be a fulcrum or the structure to be acting as a lever when driving the nodule. Merely some structure capable of being a lever and that could also drive the nodule. Therefore, the structure in Simon and Menacci previously interpreted as a lever can be used as a lever if one so desired. Further, as clearly depicted, the structure drives the nodules.

Applicant further contends that the newly added limitations defining the structure related to the rest, both Simon and Menacci are fully capable of being attached to the wrist of a person is desired.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Shaffer whose telephone number is (571)272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard Shaffer/  
Examiner, Art Unit 3733

/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733